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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

CENTURY SURETY COMPANY;

Plaintiff,

v.

AGEAN, INC. dba PALLAS CLUB, an
Oregon corporation; R.S., an individual;

Defendants.

Civil No.: _____

**COMPLAINT FOR DECLARATORY
JUDGMENT**

**Declaratory Judgment (28 U.S.C. § 1332
and 28 U.S.C. §2201)**

PARTIES

1. Plaintiff Century Surety Company (“Century Surety”) is an Ohio corporation engaged in the business of insurance. Century Surety’s principal place of business is in Michigan.

2. Upon information and belief, Defendant Agean, Inc. dba Pallas Club (“Agean”) was, at all times material to this action, an Oregon corporation with its principal

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place of business in Portland, Oregon.

3. Upon information and belief, Defendant R.S. is an individual and is currently a citizen of the State of Washington.

JURISDICTION AND VENUE

4. The amount in controversy exceeds \$75,000, exclusive of interest and costs.

5. The Court has jurisdiction pursuant to 28 U.S.C. § 1332 (Diversity of Citizenship) and 28 U.S.C. § 2201 (Declaratory Judgment).

6. Venue in the District of Oregon, Portland, Oregon, is proper under 28 U.S.C. § 1391 and Local Rule 3-2(b). Century Surety seeks a declaratory judgment of its obligations, if any, for alleged bodily injury to defendant R.S. alleged to have been caused by Century Surety's insured, defendant Agean.

7. An actual controversy exists between the parties as to whether Century Surety has an obligation to defend and/or indemnify Agean for claims alleged against it in a lawsuit currently pending in Oregon state court.

THE UNDERLYING LAWSUIT

8. On or about August 13, 2018, defendant R.S. filed a First Amended Complaint for Damages ("Amended Complaint") in a case captioned *R.S. v. Shanghai Joe, Inc. dba The Safari Showclub; Agean, Inc. dba Pallas Club; JK Enterprise, Inc. dba Cabaret II; XMag, LLC dba Exotic Magazine; AJB Holdings LLC dba Black Diamond Recording Studios; Otra, LLC dba The Safari Showclub*, Multnomah County Circuit Court Case No. 18CV28333 ("underlying lawsuit"). A copy of the Amended Complaint is attached hereto as Exhibit 1.

9. The Amended Complaint alleges that, when R.S. was fifteen years old, "she

was sold for sexual gratification and child pornography through multiple strip clubs in Oregon,” including Agean (dba Pallas Club). The Amended Complaint refers to these strip clubs as Strip Club Defendants.

10. The Amended Complaint alleges that the Strip Club Defendants “allowed, authorized, permitted, induced, or encouraged R.S. to dance nude” and “sell her body for money.” The Amended Complaint further alleges that the Strip Club Defendants “allowed customers, managers and/or principals to grope and/or inappropriately touch R.S., a minor, in a sexual manner.” The Amended Complaint does not identify the dates that the alleged incidents occurred.

11. The Amended Complaint further alleges that some of the strip clubs worked with Exotic Magazine and Black Diamond Recording Studios to advertise R.S. in sexually suggestive photographs in an attempt to lure customers to their strip clubs. The Amended Complaint alleges that the strip clubs promoted and profited from child pornography by “allowing, authorizing, encouraging, compelling, inducing, and/or permitting R.S., a minor to engage in the display of sexually suggestive content for the gratification of the Defendants and their customers, managers, and employees.” The Amended Complaint does not identify the names of the strip clubs that advertised R.S. in the manner set forth above.

12. The Amended Complaint alleges that, based on R.S.’s appearance and lack of identification, the Strip Club Defendants “knew or should have known that R.S. was a victim of sex trafficking” and was a minor. The Amended Complaint alleges that R.S. told employees at one or more of the strip clubs that she was only fifteen years old, and celebrated her sixteenth birthday with employees of one of the clubs. The Amended

Complaint further alleges that once the Strip Club Defendants knew R.S. was a missing child in danger, they hid that fact or failed to take any action. The Amended Complaint does not identify which of the strip clubs had knowledge of these alleged facts.

13. The Amended Complaint alleges that “the owners, agents, and/or employees of the strip clubs...knowingly benefitted financially from the exploitation of R.S. when she was only fifteen years old.” The Amended Complaint alleges that the “Strip Club Defendants profited from their wrongful and illegal conduct by making money for themselves and the strip clubs.”

14. R.S. alleges seven claims for relief against all defendants: Intentional Infliction of Emotional Distress, Negligent Infliction of Emotional Distress, Negligence, Negligent Training and/or Supervision, Negligent Failure to Provide for Safety and Security, Negligent Failure to Intervene, and Violation of ORS 30.867 (Sex Trafficking).

15. R.S. alleges to have suffered bodily injury, including emotional damage, as a result of the misconduct of the strip clubs, and seeks economic and noneconomic damages in the amount of \$5.2 million dollars. R.S. alleges noneconomic damages for pain, emotional distress, mental suffering, humiliation, and injury to reputation.

16. Century Surety is currently providing a defense to Agean in the underlying lawsuit under a full reservation of rights.

THE CENTURY SURETY POLICY

17. Century Surety Company issued policy number CCP 519762 to Agean, Inc. dba The Pallas Club for the policy period November 21, 2007 to November 21, 2008 (the “Policy”). Relevant portions of the Policy are attached hereto as Exhibit 2.

18. Subject to its terms, conditions, limitations and exclusions, the Policy provides as follows:

SECTION I – COVERAGES
COVERAGE A BODILY INJURY AND PROPERTY
DAMAGE LIABILITY

1. Insuring Agreement

- a.** We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty to defend the insured against any “suit” seeking damages for “bodily injury” or “property damage” to which this insurance does not apply....

* * *

- b.** This insurance applies to “bodily injury” and “property damage” only if:

* * *

- (2)** The “bodily injury” or “property damage” occurs during the policy period;
- (3)** Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no “employee” authorized by you to give or receive notice of an “occurrence” or claim, knew that the “bodily injury” or “property damage” had occurred, in whole or in part. If such a listed insured or authorized “employee” knew, prior to the policy period, that the “bodily injury” or “property damage” occurred, then any continuation, change or resumption of such “bodily injury” or “property damage” during or after the policy period will be deemed to have been

known prior to the policy period.

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

- a.** We will pay those sums that the insured becomes legally obligated to pay as damages because of “personal and advertising injury” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty to defend the insured against any “suit” seeking damages for “personal and advertising injury” to which this insurance does not apply....
- b.** This insurance applies to “personal and advertising injury” caused by an offense arising out of your business but only if the offense was committed in the “coverage territory” during the policy period.

A Policy endorsement (CGL 1701 0705), modifies the definitions of an “occurrence” and “personal and advertising injury” as follows:

- 13. “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions. All “bodily injury” and “property damage” arising out of an “occurrence” or series of related “occurrences” is deemed to take place at the time of the first such damage or injury even though the nature and extent of such damage or injury may change; and even though the damage may be continuous, progressive, cumulative, changing or evolving; and even though the “occurrence” causing such “bodily injury” or “property damage” may be continuous or repeated exposure to substantially the same general harmful conditions.
- 14. “Personal and advertising injury” means injury, including consequential “bodily injury”, arising out of one or more of the following offenses:
 - a.** False arrest, detention or imprisonment;

- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor; or
- d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products, or services.

The Policy defines "bodily injury" as follows:

- 3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

19. The following exclusions apply to Coverage A of the Policy:

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

* * *

e. Employer's Liability (Modified by Endorsement CGL 1702 11/00)

"Bodily injury" to:

- (1) An "employee" of the named insured arising out of and in the course of:
 - (a) Employment by the named insured;
 - or

- (b) Performing duties related to the conduct of the named insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the named insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

An endorsement in the Policy (CGL 1701 0705) modifies the definition of an "employee" and defines an "employee" as:

- 5. "Employee" includes a "leased worker", a "temporary worker" and a "volunteer worker".

20. The following exclusions apply to Coverage B of the Policy:

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another:

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity.

* * *

d. Criminal Acts

“Personal and advertising injury” arising out of a criminal act committed by or at the direction of the insured.

21. The Policy contains a Special Exclusions and Limitations Endorsement (CGL 1701 0705) which applies to both Coverages A and B and provides, in relevant part:

A. In consideration of the premium charged this policy has been issued subject to the following exclusions being added to Coverages A & B:

This insurance does not apply to:

* * *

4. Criminal Acts

- a.** “Bodily injury” or “property damage” arising out of or resulting from a criminal act committed by any insured, including any additional insureds or
- b.** “Bodily injury” or “property damage” arising out of or resulting from a criminal act at the direction of any insured, including any additional insureds.

22. The Policy contains an endorsement titled Exclusion – Assault and Battery (CGL 1704 0206), which applies to both Coverages A and B and provides:

- 1.** This insurance does not apply to “bodily injury”, “property damage” or “personal and advertising injury” arising out of or resulting from:
 - (a)** any actual, threatened or alleged assault or battery;
 - (b)** the failure of any insured or anyone else for whom any insured is or could be held legally liable to prevent or suppress any assault or battery;
 - (c)** the failure of any insured or anyone else for whom any insured is or could be held legally

liable to render or secure medical treatment necessitated by any assault or battery;

- (d) the rendering of medical treatment by any insured or anyone else for whom any insured is or could be held legally liable that was necessitated by any assault or battery;
- (e) the negligent:
 - (i) employment;
 - (ii) investigation;
 - (iii) supervision;
 - (iv) training;
 - (v) retention;

of a person for whom any insured is or ever was legally responsible and whose conduct would be excluded by **1. (a), (b), (c) or (d)** above.

2. We shall have no duty to defend or indemnify any claim, demand, suit, action, litigation, arbitration, alternative dispute resolution or other judicial or administrative proceeding seeking damages, equitable relief, injunctive relief, or administrative relief where:

- (a) any actual or alleged injury arises out of any combination of an assault or battery-related cause and a non-assault or battery-related cause.
- (b) any actual or alleged injury arises out of a chain of events which includes assault or battery, regardless of whether the assault or battery is the initial precipitating event or a substantial cause of injury.
- (c) any actual or alleged injury arises out of assault or battery as a concurrent cause of injury, regardless of whether the assault or battery is the proximate cause of injury.

3. For the purposes of this endorsement the words assault

and battery are intended to include, but are not limited to, sexual assault.

23. The Policy contains an endorsement titled Exclusion – Bodily Injury to Independent Contractors (CGL 1710 11/00), which applies to both Coverages A and B and provides:

It is agreed that this insurance does not apply to “bodily injury” to:

- (1) Any independent contractor or the “employee” of any independent contractor while such independent contractor or their “employee” is working on behalf of any insured; or
- (2) The spouse, child, parent, brother or sister of such independent contractor or “employee” of the independent contractor as a consequence of (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

24. The Policy contains an endorsement titled Abuse and Molestation Exclusion (CG 21 46 07 98). The endorsement applies to both Coverages A and B and provides:

This insurance does not apply to “bodily injury”, “property damage” or “personal and advertising injury” arising out of:

1. The actual or threatened abuse or molestation by anyone of any person while in the care, custody or control of any insured, or
2. The negligent:
 - a. Employment;
 - b. Investigation;

- c. Supervision;
- d. Reporting to the proper authorities, or failure to so report; or
- e. Retention;

of a person for whom any insured is or ever was legally responsible and whose conduct would be excluded by Paragraph 1. above.

25. The Policy contains an endorsement titled Employment-Related Practices Exclusion (CG 21 47 07 98). The endorsement applies to both Coverages A and B and provides, in relevant part:

- A. The following exclusion is added to Paragraph 2.,
**Exclusions of Section I – Coverage A – Bodily Injury
 And Property Damage Liability:**

This insurance does not apply to:

“Bodily injury” to:

- (1) A person arising out of any:

* * *

- (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or

- (2) The spouse, child, parent, brother or sister of that person as a consequence of “bodily injury” to that person at whom any of the employment-related practices described in Paragraphs (a), (b) or (c) above is directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and

- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

**B. The following exclusion is added to Paragraph 2.
Exclusions of Section I – Coverage B – Personal And
Advertising Injury Liability:**

This insurance does not apply to:

“Personal and advertising injury” to:

- (1) A person arising out of any:

* * *

- (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or

- (2) The spouse, child, parent, brother or sister of that person as a consequence of “bodily injury” to that person at whom any of the employment-related practices described in Paragraphs (a), (b) or (c) above is directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

26. The allegations in the underlying lawsuit all arise out of conduct excluded by the Policy. These exclusions apply separately to preclude or limit any duty to defend or indemnify Agean that Century Surety might otherwise have for damages for which Agean may be found liable in the underlying lawsuit.

COUNT I

**DECLARATORY JUDGMENT – NO DUTY TO DEFEND
AGEAN IN THE UNDERLYING LAWSUIT**

27. Century Surety restates and re-alleges the allegations in paragraphs 1 through 26 of its Complaint.

28. Based on the terms, conditions, limitations and exclusions of the Century Surety Policy and the allegations of the Amended Complaint in the underlying lawsuit, Century Surety has no duty to defend Agean under the Policy in connection with the claims made in the underlying lawsuit.

COUNT II

**DECLARATORY JUDGMENT – NO DUTY TO
INDEMNIFY AGEAN IN THE UNDERLYING LAWSUIT**

29. Century Surety restates and re-alleges the allegations in paragraphs 1 through 28 of its Complaint.

30. Based on the terms, conditions, limitations and exclusions of the Century Surety Policy, the allegations of the Amended Complaint in the underlying lawsuit, and the facts surrounding the allegations set forth in the underlying lawsuit, Century Surety has no duty to indemnify Agean under the Policy in connection with the claims made in the underlying lawsuit.

WHEREFORE, Century Surety prays for judgment as follows:

1. For a declaration that Century Surety has no duty to defend Agean against claims alleged against it in the underlying lawsuit;

2. For a declaration that Century Surety has no duty to indemnify Agean against claims alleged against it in the underlying lawsuit;

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3. For Century Surety's costs and disbursements incurred herein; and
4. For such other relief as the Court deems just and proper.

DATED: December 3, 2018

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